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December 16, 1997

Cynthia L. Johnson, Director
Cash Management Policy and Planning Division
Financial Management Service
U.S. Department of the Treasury
Room 420
401 14th Street, NW
Washington, DC 20227

**RE: Proposed Rule on Conversion From Checks to Electronic Funds Transfer for
Federal Payments (62 Fed. Reg. 48-714, September 11, 1997)**

Dear Ms. Johnson:

The American Association of Retired Persons (AARP) appreciates this opportunity to provide comments on the proposed rule to implement Section 31001(x) of the Debt Collection Improvement Act of 1996 (the "Act") requiring federal agencies to convert all federal payments from check to electronic funds transfer (EFT). The Act provides that subject to the authority of the Secretary of the Treasury to grant waivers, all federal payments (other than payments made under the Internal Revenue Code) made after January 1, 1999 must be made by EFT.

This proposed rule is of major importance to AARP's membership because older persons make up the majority of those affected by mandatory conversion to EFT. Social Security beneficiaries, of whom 81 percent are age 62 and older, make up 70 percent of federal benefit check recipients. Supplemental Security Income (SSI) recipients are the next largest segment (20%) and one-third of these recipients are older persons. Altogether, some 20 million Social Security and SSI recipients receive their benefits by paper check. Approximately 6.5 million of these recipients do not have bank accounts.

AARP recognizes the valuable role that EFT can play in preventing fraud and enhancing banking safety and convenience. However, the Association did not favor *mandating* EFT for *all* recipients of federal payments because it could impose undue hardships on many, especially those without accounts. Ultimately the Association supported the legislation reluctantly and only with provision for beneficiary safeguards due to hardships. AARP is concerned that unless the implementing regulations contain appropriate safeguards, mandatory conversion to EFT will force many recipients to accept undesirable payment options and leave them exposed to a variety of unfair and deceptive practices. Therefore, it is critical that the Secretary use the broad authority granted under the Act to (1) protect payment recipients from unnecessary or excessive charges to access their benefits,

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(2) assure the availability of hardship waivers that effectively meet individual needs, and
(3) create meaningful opportunities for those currently without accounts to obtain essential financial services and participate more fully in the nation's financial system.

AARP is pleased to note that self-certifying waivers for physical disability, geographic barriers, and financial hardship have been incorporated into the proposed rule. The Association also supports provisions that defer implementation of EFT for those without bank accounts beyond the January 1, 1999 deadline and limit the definition of "authorized payment agent" to individuals or entities selected under existing federal regulations governing representative payees and fiduciaries. These provisions and subsequent comments by Undersecretary Hawke signal the Department's growing recognition of the "real life" needs of federal payment recipients and the enormity of Treasury's task in implementing the transition to a paperless payment system. Nevertheless, AARP believes substantial modifications to the proposed rule are needed to assure that conversion to EFT can be implemented without causing hardships to payment recipients. The Association strongly urges that the following recommendations be incorporated in the final rule:

- assure the availability of waivers to address hardships resulting from mental disability, literacy and/or language barriers;
- provide for access to financial hardship waivers and electronic transfer accounts (ETAs) for those payment recipients who are forced to give up voluntary accounts due to rising bank fees and charges or adverse changes in their financial circumstances;
- permit the use of administrative waivers by agencies to prevent the loss of federal benefits to recipients;
- limit access fees paid by recipients with electronic transfer accounts (ETAs) to the actual cost of the transaction and provide multiple access options;
- protect recipients who establish voluntary accounts pursuant to the rule from exorbitant fees to obtain their benefits and unfair practices, especially where depository institutions subcontract with non-financial institutions to provide services;
- provide increased incentives for financial institutions to provide basic accounts and improve consumer information regarding account options; and
- undertake a vigorous public education and outreach effort to assist recipients in understanding their payment options and meeting their financial service needs.

These and other concerns regarding the proposed provisions are discussed in detail below.

Section 208.2 - Definitions

AARP's comments in this section will address the proposed definitions for "authorized payment agent" and "financial institution."

208.2(b) – Authorized Payment Agent

As the Notice of Proposed Rulemaking states, this term has been the subject of extensive debate since EFT's inception. AARP strongly believes that the definition of this term must be tightly crafted to protect the interests of recipients. Specifically, we are very concerned that if non-financial, "fringe banking" institutions are allowed to be authorized agents, recipients may have to pay high charges to gain access to their benefit checks. As many recipients are low-income consumers or are living on fixed incomes, this would jeopardize their financial well-being. Further, it is fundamentally unfair to expose recipients to payment agents that are not subject to federal consumer protection laws, and are not charged with acting in the recipient's fiduciary interest.

Therefore, AARP is pleased that Treasury is limiting the definition of "authorized payment agent" to any individual or entity that is appointed or otherwise selected as a representative payee or fiduciary, as defined by the various federal agencies that already have detailed regulations addressing the qualifications and responsibilities of these third parties, and that access to the federal payments must be made through a federally insured institution. The risks posed by allowing the deposit of a federal payment into an account controlled by a third party are clearly outlined in the discussion of authorized payment agents in the proposed rule (Notice at page 48716). Therefore, it is imperative that authorized payment agents have a fiduciary duty to recipients.

The proposal, however, implies that this limitation is driven to some degree by the operational impossibility of delivering federal payments to the Automated Clearing House (ACH) network system. AARP urges the Treasury to ensure that accounts maintained by authorized payment agents be permitted *only* in financial institutions, regardless of any future technology that will facilitate EFT transfers to non-financial institutions. Otherwise, as the Notice states, there may be cause for concern about the potential failure of authorized payment agents to honor their obligations. (Notice at 48717.)

AARP is also pleased that the term "authorized payment agent" is not being used as a synonym for a financial institution. The interim rule stated that the recipient of a federal payment "must designate a federal institution *or* authorized payment agent through which a Federal payment may be made, or certify in writing that the recipient does not have an account with a financial institution or authorized payment agent" (61 Fed. Reg. 39256; July 26, 1996.) The clarification that an authorized payment agent will "stand in the shoes" of a recipient who, because of mental or physical infirmities, is unable to manage his or her payments provides assurance that the deposits will be protected by

insured institutions. The mandate that these authorized payment agents be fiduciaries to their respective recipients also provides needed consumer protection. The Association is concerned, however, that the protections provided by the rule's definition of authorized payment agent could be lost if entities such as check cashers, pawnshops, and rent-to-own outlets are permitted to become conduits of federal benefit payments under sections 208.5 and 208.6 which outline requirements for the electronic transfer accounts (ETAs) established by the Department and accounts established voluntarily by recipients pursuant to the rule.

AARP appreciates that in establishing a definition for "authorized payment agent," Treasury is seeking to exclude from participation in EFT disreputable financial service entities. At the same time, there must be careful monitoring by both federal payment agencies and Treasury of any potential problems that might restrict recipient access to payments. The Secretary should reserve the authority to expand the "authorized payment agent" definition based on verifiable evidence that recipient access to funds and essential related services is being impeded.

208.2(e) - Financial Institution

Treasury has expanded the definition of the term "financial institution" from the definition used in the interim rule to include all financial institutions that can participate directly in the ACH. Thus, these institutions must be authorized by law to accept deposits. AARP agrees with this expansion of the definition. While it is essential that the institutions accepting federal payments be subject to safety and soundness regulations, the range of participating institutions should be as broad as possible. A certain class of deposit institutions should not be unjustly enriched by being the sole group authorized to accept payments by EFT.

Section 208.4 - Waivers

The Act authorizes the Secretary to waive the requirement to make Federal payments by EFT for individuals or classes of individuals for whom compliance imposes a hardship. AARP is particularly pleased that Section 208.4 of the proposed rule incorporates self-certifying individual waivers for physical disability, geographic barriers, and financial hardship. The Association also supports provisions in this section that defer implementation of EFT for those without bank accounts beyond the January 1, 1999 deadline. However, AARP believes that the eligibility criteria for a financial hardship waiver are too narrow and should be modified. In addition, waivers based on mental disability, literacy and language barriers should be included in the final rule.

208.4(b) - Waiver for Financial Hardship

Under the proposed rule, a waiver for financial hardship is only available to those who currently do not have an account at a financial institution. This provision is intended to protect those benefit recipients who would pay more to receive their benefits by EFT than they currently pay to receive payment by check, particularly beneficiaries who are able to cash their checks at grocery stores and other locations at little or no cost. While AARP supports this exemption, the Department's interpretation ignores the possibility that adverse changes in an individual's financial circumstances, and/or the impact of rising bank fees on the budgets of persons living on limited or fixed incomes, may create a financial hardship for some older recipients who currently have accounts. Further, small savings or "burial" accounts held by many older persons are not appropriate vehicles for the receipt of federal benefits. Individuals in both these circumstances should be permitted to apply for a waiver based on financial hardship or obtain an Electronic Transfer Account upon request.

Banking is becoming increasingly expensive as financial institutions charge for services that they previously offered free of charge. In its 1997 Annual Report to Congress on Retail Fees and Services of Depository Institutions, the Federal Reserve noted that seven of nine statistically significant changes in fees reported for banks between 1995 and 1996 were increases. The General Accounting Office (GAO) has also reported that the average ATM surcharge fee has more than tripled since the end of 1995, from \$0.17 to \$0.62 in 1997. Further, there was a 320 percent increase in the number of ATMs that imposed surcharge fees on non-account holders between the end of 1995 and February 1, 1997.

In contrast, the ability of many benefit recipients to deal with cost increases is severely limited. Sixteen percent of Social Security beneficiaries depend entirely on their benefits for 100 percent of their income and an additional 14 percent rely on Social Security for 90 to 99 percent of their incomes. Further, 10.5 percent of Social Security beneficiaries over the age of 65 are poor and an additional 47.8 percent are kept out of poverty by their benefits. The Senate Banking Committee has estimated that an older couple with an electronic-only access account, each receiving Social Security and making an average number of transactions per year could be charged \$305 annually to access their benefits. Costs of this magnitude coupled with the absence of protections against increases in banking fees make it necessary to assure that waivers are available in cases of financial hardship -- even for those recipients who may currently have accounts.

Many older persons may maintain savings accounts with small amounts of funds that are intended primarily for funeral or burial costs. According to the latest Survey of Consumer Finances (1995), slightly more than 28 percent of households headed by persons age 60 and older have a savings account. While such accounts can accept direct deposit, their appropriateness for the purpose of receiving federal benefits is questionable because of limited transaction capability and the loss of interest that might occur if

frequent withdrawals are attempted. Waivers and ETAs should remain options for these individuals.

Waivers based on Mental Disability

AARP also believes that a hardship waiver based on mental disability should be included in the final rule. Many benefit recipients with mental impairments are capable of managing their funds in a check-based system and can function independently without turning their finances over to a representative payee. Yet, some of these recipients may simply be unable to remember a PIN. Others are capable of counting out money to make purchases and even write checks to pay bills but have difficulty dealing with concepts like EFT that cannot be felt or touched. There are two additional compelling reasons for allowing waivers on the basis of mental disability. First, it is currently difficult to find persons or entities to serve as representative payees. Second, without a hardship waiver, these individuals could be denied the ability to manage their finances and thereby maintain their independence.

Waivers based on Fluency in English and Literacy

Similarly, hardship waivers related to fluency in English and literacy should also be incorporated in the final rule. While the Department maintains that such factors do not pose barriers to an EFT delivery mechanism, AARP believes that many older persons who have limitations in these areas will experience difficulties in coping with electronic transfers. According to the Census Bureau, over 925,000 persons age 65 and older have great difficulty speaking English or do not speak it at all. It does not take an ability to read English to be able to sign a check. However, this ability is necessary to use an Automated Teller Machine (ATM) to access funds in many areas.

Literacy and familiarity with banking technology will become critical factors as large numbers of persons are required to use Automatic Teller Machines and Point of Service terminals for the first time to access government benefits. The Census reports that 12 percent of persons age 65 and older had an 8th grade education or less compared to only 2 percent of those age 18 to 64. In addition, data from the Survey of Consumer Finance (SCF) indicate that among those aged 65-74 without checking accounts, difficulties in managing and balancing an account were among the chief reasons given for not having one.

Families without bank accounts also tend to have lower educational and literacy levels. An analysis of the 1985 Survey of Income and Program Participation (SIPP) by the U.S. General Accounting Office (GAO) concluded that 57 percent of nondepositor family heads had 9 to 12 years of education and 24 percent had 8 years or less. In his analysis of the 1989 SCF, John P. Caskey, author of Fringe Banking: Check-Cashing Outlets, Pawnshops, and the Poor, found that households with deposit accounts (either checking

or savings) averaged 12.6 years of education compared to only 9.9 years for households without deposit accounts.

208.4 (h) - Administrative Waivers

AARP strongly recommends that Section 208.4 (h) be modified to enable agency directors to issue waivers administratively for classes of benefit recipients currently receiving checks to prevent the loss of benefits or the disruption of agency operations. The Association is particularly concerned about the capacity of the Social Security Administration (SSA) to handle potentially millions of phone calls and other information requests from concerned recipients as well as process applications for waivers, Direct Deposit, and electronic transfer accounts (ETAs) as required under section 208.7. In the next 25 months, SSA will be required to process two-thirds the number of applications for Direct Deposit handled in the last 21 years! SSA has indicated that its toll-free 800 number *Dial Direct Deposit* service has nearly reached maximum capacity, with attempted phone calls exceeding 120 million in 1996.

While the agency has initiated its *QuickStart* system that allows depository institutions to enroll customers electronically for Direct Deposit, complete and authoritative information on payment options, including waivers, is not likely to begin reaching benefit recipients until the second quarter of next year. This leaves little time before the January 1, 1999 deadline to process applications and assist some 13.5 million Social Security and SSI beneficiaries with accounts who must make decisions on converting to EFT or applying for a waiver. SSA's local offices and phone system could be overwhelmed in the second half of 1998 by Social Security and SSI recipients seeking assistance and AARP is concerned that many beneficiaries will not have the information they need to make appropriate decisions. Further, section 208.5 of the proposed rule requires the Department to place a recipient's benefits in a default account if information required under section 208.8 is not provided. A lack of information about EFT-99, misunderstanding of the requirements or failure to report within the time specified could result in a delay or loss of access to vital benefits and cause significant hardship for many beneficiaries. The Association believes it may be necessary for SSA to apply an administrative waiver to temporarily suspend certain classes of benefit recipients from having to receive benefits by EFT. This suspension would prevent the loss of benefits to recipients and avoid a chaotic administrative situation.

Finally, the section-by-section analysis accompanying the proposed rule notes that Treasury will develop, and make available to agencies model language that an individual could use to certify hardship due to one of the enumerated barriers. This language should be made available for public comment prior to its release for agency use. The language used should be consistent with the concept of self-certification and should not cause recipients to believe that their benefits would be interrupted or withheld if they applied for a waiver.

Section 208.5 - Access to Account Provided by Treasury

Section 208.5 of the proposed rule provides that where an individual does not have an account, the Department will provide access to an electronic transfer account (ETA) at a federally insured financial institution. AARP recommends that this section be modified to provide *any* payment recipient with the option of using an ETA if it is certified that a financial hardship exists. As noted in comments on the previous section, some older benefit recipients may not be able to maintain voluntary accounts due to rising fees. However, access to an ETA would allow them to continue to benefit from the safety of electronic transfer and would save the federal government processing costs by not having to provide a paper check.

AARP agrees with the Department's decision to provide an additional comment period once it develops its initial proposals defining the specific characteristics of the ETA accounts. In order to understand the basis of the Department's proposals and to compare alternatives, the Association recommends that the Coopers and Lybrand report evaluating account costs and structure be released in conjunction with the proposed account specifications. This would help everyone understand the data that underlies future proposals and rules.

At this time, AARP would also like to address a number of issues raised in the section-by-section analysis accompanying the proposed rule. These include the role of non-financial institutions, incentives for basic banking, ETA features and costs, and consumer protections.

Role of Non-Financial Institutions

AARP believes that recipient funds should be held in a federally insured financial institution as defined under section 208.2 (e). The provision of federal deposit insurance is an essential safeguard for recipient benefits. However, it would not be necessary for the Treasury financial agent to be a financial institution provided all ETAs are covered by federal deposit insurance, recipients have multiple options for accessing their funds, including direct access through the federally insured institution; and Treasury's contract with the financial agent requires a full range of consumer safeguards, including controls on fees and Regulation E coverage. The paucity of financial institutions in many rural and inner city communities may require partnerships between financial and non-financial institutions to assure adequate access to accounts by many federal benefit recipients. For example, these might include arrangements for access in supermarkets, grocery stores, social service agencies, or local post office branches.

These partnerships, however, must be closely monitored by the Department to prevent entities that operate without adequate regulatory standards and oversight, such as check cashers, pawnshops and rent-to-own outlets, from taking advantage of benefit recipients who may have limited options for accessing their funds. According to a report released in

September 1997 by the Consumer Federation of America, fees charged by check cashers to cash a Social Security check have risen 37 percent since 1987. The report also found that only 12 states cap the fees that check cashers can charge. Many of these businesses are engaged in lending activities that charge exorbitant rates and will use free check cashing as a means of attracting customers into their stores. *AARP strongly urges the Department to limit the fees for access to cash that recipients with ETA accounts can be charged to the actual cost of the transaction. Further, in developing the terms and conditions for the financial agent, the Department should prohibit partnerships with or the participation of entities that engage in such activities as pay day loans, rent-to-own, and other unfair and deceptive practices. The financial agent should be required to assure the provision of multiple options for recipients to access their funds so that check cashers or other entities cannot provide the sole access for a recipient.* The Association believes implementation of such a policy will help keep access costs for consumers at reasonable levels and prevent exploitative situations from occurring.

Incentives for Basic Banking

To address the needs of benefit recipients without bank accounts, AARP believes that financial institutions should be required to offer basic accounts which represent a modest cost to the institutions. Such a requirement should not be viewed as burdensome since financial institutions will benefit significantly from the mandatory conversion to EFT of existing accounts held by beneficiaries and the establishment of new deposit accounts for the 10 million federal benefit recipients currently without such accounts. A Federal Reserve Bank study indicates that it costs, on average, \$0.74 to handle a check deposited over the counter. An automated deposit costs \$0.05. According to the Social Security Administration, converting all Social Security and SSI payments to direct deposit would save financial institutions more than \$182 million a year. Estimates based on a Treasury study of the Direct Payment Card program, show that undrawn balances on the new ETA accounts could generate \$22.8 million a year in "float" income for financial institutions. In addition, full implementation of EFT'99 will save the Treasury over \$100 million annually. AARP believes a portion of these cost savings and the float from the ETAs should be allocated to providing basic accounts.

As noted in a recent Department publication entitled "Financial Access in the 21st Century," profitability is not a major barrier to establishing these accounts. More significant is the perception that the unbanked represent a relatively small market in terms of revenue potential compared to other business opportunities among more affluent segments of the population. Further, there is a presumption that targeting lower-income consumers conflicts with the "upscale" image that many banks are trying to establish.

AARP acknowledges the efforts of some financial institutions to provide basic accounts. For example, a recent survey by the Consumer Bankers Association shows that 38 percent of respondents indicated they offered a "basic" or "lifeline" account. However, such accounts are not available in all communities and consumers may find that their

features are inappropriate to their needs. Nevertheless, reliable and unbiased information about the costs and features of basic accounts currently offered by local financial institutions could be helpful to many federal benefit recipients. AARP recommends that the Treasury Department contract with an independent research firm for the production of such consumer guides. In addition, Treasury's financial agent(s) should be required to provide prospective ETA account holders with a list of additional financial service options in their area such as credit unions (with classes of membership) for which the recipient is eligible, or minority-owned savings institutions, many of which are located in communities with large numbers of benefit recipients who do not have accounts. Finally, the Department should explore additional ways for financial institutions to improve their service rating under the Community Reinvestment Act (CRA) if they establish free or low-cost accounts for federal benefit recipients or support outreach activities aimed at providing accounts to those who lack them.

Features of the ETA

AARP supports development of the ETA as a mechanism to leverage additional financial services for low-income households and to prevent unwarranted price increases in this segment of the financial services market. The potentially large economies of scale represented by benefit recipients without accounts and those who may no longer be able to afford their current accounts, offer the Department an opportunity to spur innovation in the financial services industry by establishing the ETA as a standard of excellence for service, safety, and cost. The structure of the ETAs is critical in determining how effective these accounts will be in increasing participation in the banking system. While the Department's Direct Payment Card program offers some valuable experience, such as the use of a flat fee, AARP disagrees with commentators who suggest that the ETA should be an account with very limited features. As noted previously, the financial services industry has, for a variety of reasons, failed to offer products and services attractive to those currently without accounts. AARP believes that unless ETAs offer attractive financial services and convenience options particularly suited to individuals with limited resources, waivers will remain the superior choice for most. Therefore, AARP would recommend that the ETA incorporate features such as the following:

- Available to individuals with \$750 or less on deposit during each monthly period;
- An account maintenance fee no greater than cost plus ten percent profit, with Federal Reserve oversight;
- Minimum initial deposit requirement of no more than \$25;
- Minimum balance requirement of \$1;
- Ten free withdrawals permitted each month;

- A monthly statement or passbook detailing account activity; and
- Disclosure, loss, and error resolution protection under Regulation E. Simple procedures should also be provided for replacement of personal identification numbers (PINs) and cards.

Release of Treasury's ETA consultant report would be very helpful in further refining the tradeoffs between various service features and cost. For example, a reduction in the number of free withdrawals might be acceptable if low cost money orders, bill payer or teller services were made available. Research by John Caskey of Swarthmore College indicates that the provision of money orders might be more useful than a checking account for some low-income households because it would greatly reduce their payment of bounced check fees. The Association would also be interested in exploring whether some limited teller or interactive transactions might be available for older benefit recipients who have difficulty using ATM machines. If access to ATMs is limited before fees are imposed, the Association believes it would be important to have the benefit card accepted in a wide array of area stores and service outlets through Point of Sale (POS) terminals. Recipients should not be charged for POS transactions. Similarly, provision of monthly statements is a relatively expensive service that might be waived if ATM and other transactions include information about the remaining balance and fees and an 800 number is available to recipients.

The Department has indicated in the section-by-section analysis that it will give recipients the option to decide whether federal and state benefits are placed on one card. AARP supports this position. However, in order to implement this policy, Treasury must negotiate individual agreements with the states that provide state-funded benefits via Electronic Benefit Transfer (EBT). The most important factor from a consumer viewpoint is making sure that recipients understand that their federal benefits are covered by Regulation E, but their state benefits are not. Consumers need to be aware of the differences in coverage prior to making the decision to place their federal and state benefits on one card. Some industry commentators have recommended eliminating Regulation E coverage for the ETA accounts as a means of reducing the cost of the accounts. However, it is important to note that experience with the Direct Payment Card program indicates claims and losses pursuant to Regulation E are minimal. Reclamation costs resulting from delays in death notifications were more costly than Regulation E claims. Further, elimination of Regulation E protections would negate the Act's requirement that the ETAs have the same consumer protections as other accounts.

The name of the financial institution through which a recipient is receiving benefits should be displayed on the ETA access card. To avoid any stigma, no markings signifying the user as a benefit recipient should be apparent on the card. AARP also supports incorporating a savings feature into the ETA that would permit recipients to make deposits. However, focus groups conducted by the Department and research by John Caskey indicates that many persons are without accounts because they fear legal

attachment of these savings. Social Security and SSI benefits are currently covered by protections against attachment; it is critical that these protections be offered for ETA accounts.

Finally, Treasury's agent(s) should be required to provide a "hands-on" training opportunity upon request for benefit recipients who may be unfamiliar with ATMs or other electronic means of accessing benefits. Utilization of ATM machines by persons age 65 and older is half that of persons age 35 and younger. Researchers at Georgia Tech tested more than 1500 older adults who had never used ATM machines and found that the group was able to use the machines without making mistakes only 20 percent of the time. However, over half of the participants in the Georgia Tech study indicated they would use an ATM if someone showed them how.

Section 208.6 Account Requirements

Proposed section 208.6 addresses account requirements for federal payments made by electronic transfer. AARP believes that provisions in the Act calling for access "at a reasonable cost" should be interpreted as applying to *all* accounts established as a result of mandatory EFT -- not just those established by Treasury. *This statutory goal can be achieved by excluding as conduits for federal benefit payments entities that largely operate without adequate regulatory standards, scrutiny and consumer protections such as check cashers, pawn shops and liquor stores.* Recipients could still access their benefits through ATMs or POS devices at an alternative provider if that is their choice but they should not be *forced* to use any single provider to access their funds, nor should they be forced to pay excessive fees.

Federal payment recipients have no protections against unrestrained hikes in banking service fees. Many seniors depend on these payments for most, if not all, of their income. The absence of protections increases the likelihood that unbanked individuals will opt not to open accounts and many banked recipients may close existing accounts to seek hardship waivers. The effect would be to reduce, rather than increase the accessibility of the banking system.

Section 208.8 Recipient Responsibilities

The proposed rule requires a recipient to choose one of three options: 1) designate a financial institution or an authorized payment agent to which payment will be made to an account, and provide the agency the information needed to deliver the payment by EFT; 2) certify in writing to the agency making the payment that the individual does not have an account (in which case, an account established by Treasury will be eventually established for the recipient.); or 3) certify in writing to the agency making the payment that receiving payment by EFT would impose a hardship, as described in Section 208.4. However, AARP has concerns about the adequacy of the Department's public education campaign and the ability of the Department and other federal agencies to assist benefit

recipients in understanding their payment options given the tight deadlines and large numbers of persons affected. Effective public education and outreach are essential to promote broad acceptance of EFT without undue reliance on waivers -- especially by those outside the banking system.

The populations most seriously affected by the proposed rules -- the mentally and physically disabled, those who lack fluency in English or have low levels of literacy -- are those least able to cope with written requirements. In addition, many benefit recipients will be unfamiliar with banking, much less electronic funds transfer. However, as noted in earlier portions of these comments, the consequences for recipients of misunderstanding the requirements of this section or of failing to fully evaluate the payment and waiver options could be severe.

Therefore, AARP continues to urge that each federal payment recipient be notified repeatedly -- well before the January 1, 1999 and January 1, 2000 deadlines -- in mailings containing benefit payments (and other appropriate forms of communication) that future payments be made by electronic funds transfer. The notice must explain in plain, simple-to-understand language (including translations in languages other than English): (1) what electronic funds transfer and related terminology means; (2) what available payment options are, including waivers; (3) application procedures; and (4) where a recipient can receive assistance in complying with the provisions of this proposed rule.

Section 208.9 Compliance


Section 208.9 (b) would permit the Department to assess a charge against an agency that fails to make payment by EFT as prescribed by the proposed rule. The Association is concerned that the combination of financial charges and tight implementation deadlines may cause agencies to misinterpret this provision to deny waiver applications. AARP believes such an outcome would be contrary to the Department's intent and would undermine the self certifying procedure for waiver applications established under sections 208.4 and 208.8 of the rule. The task of convincing federal payment beneficiaries to convert to EFT is likely to be formidable. A report prepared for the Department by Booz-Allen and Hamilton Shugoll shows that a plurality (47%) of all benefit recipients object to mandatory EFT. Only 28 percent support it. Given these circumstances, AARP believes charges under section 208.9 (b) should only be assessed where an agency shows a lack of good faith in attempting to comply with the rule. A punitive approach would be counterproductive and would hamper efforts to increase participation in EFT.

Conclusion

Although electronic funds transfers offer significant benefits for many federal benefit recipients, consumer protections and outreach activities must be in place well before the January 1, 1999 and 2000 deadlines. This is particularly important for those recipients who currently do not have an account at a financial institution. Federal payments are

often the primary or sole source of income for many older Americans and those federal benefit recipients without accounts. Therefore, they must be carefully protected from unfair, deceptive or abusive practices. AARP appreciates this opportunity to comment on the proposed rule. If you have any questions, or if we can be of further assistance, please contact Larry White of our Federal Affairs staff at (202) 434-3800.

Sincerely,

A handwritten signature in black ink, appearing to read "Martin Corry". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Martin Corry
Director
Federal Affairs